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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,426	02/17/2004	Peter M. Simonson	5976-23-2	2012

30448 7590 12/09/2005

AKERMAN SENTERFITT  
P.O. BOX 3188  
WEST PALM BEACH, FL 33402-3188

EXAMINER
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AMARELD JR, ROBERT W

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,426	<b>Applicant(s)</b> SIMONSON, PETER M.	
	<b>Examiner</b> Robert W. Amareld, Jr.	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-87 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to a method of stabilizing a vertebral body, classified in class 606, subclass 61.
- II. Claims 17-87, drawn to a connector assembly, classified in class 606, subclass 54.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus may be used for stabilization of other bones within the body and may not necessarily be limited to use within in the spine, furthermore the connector as defined could be used and or attached to connect any rods or posts or other object within other inventive arts such as construction scaffolding or with a child's building toy.

Because these inventions are distinct for the reasons given above and the search required for each of Groups I is not required for Group II, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: Connection assembly.

**Group I : Facet Joint**

- A. Artificial facet joint
  - a. Figure 4
- B. Joint Facet, alternate embodiment
  - a. Figure 39
- C. Dual connector arrangement, alternate embodiment
  - a. Figure 40

**Group II : Screw Posts**

- A. Long top post
  - a. Figure 1 & 2
- B. Short top post
  - a. Figure 10-11
- C. Short threads top
  - a. Figure 13-14
- D. Long threads top
  - a. Figure 15-16
- E. U-shaped coupler top of post
  - a. Figure 21-24, 32
- F. Hollow cavity to receive rod
  - a. Figure 30-31

**Group III : Couplers**

- A. Connector, slides on rod
  - a. Figure 1 & 2
- B. Connector arrangement, screws on & has side opening for rod
  - a. Figure 13-18
- C. Connector arrangement, alternate embodiment with plate
  - a. Figure 19-20
- D. Connector arrangement, alternate embodiment- u-shaped
  - a. Figure 21-24, 32
- E. Connector arrangement, alternate embodiment- twistable
  - a. Figure 25A-26
- F. Connector arrangement, alternate embodiment
  - a. Figure 27
- G. Connector arrangement, alternate embodiment
  - a. Figure 28- 29
- H. Connector, alternate embodiment
  - a. Figure 33
- I. Connector, alternate embodiment
  - a. Figure 34
- J. Connector arrangement, alternate embodiment
  - a. Figure 35-36
- K. Connector, alternate embodiment

a. Figure 37-38

L. Connector, alternate embodiment

a. Figure 41 & 44

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone number is 571-272-6170. The examiner can normally be reached on M-F 9am -5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RWA

Robert W Amareld, Jr.  
Examiner  
Art Unit 3738



**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

